

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 ANTOINETTE B. CINCOTTA
Deputy Attorney General
4 State Bar No. 120482
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2095
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

Case No. **2010-577**

12 In the Matter of the Accusation Against:

A C C U S A T I O N

13 ANN ELLIS
1975 Missouri Street, Apt. #2
14 San Diego, CA 92109

15 Registered Nurse License No. 607487

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
21 of Consumer Affairs (Board).

22 2. On or about October 2, 2002, the Board issued Registered Nurse License Number
23 607487 to Ann Ellis (Respondent). The Registered Nurse License was in full force and effect at
24 all times relevant to the charges brought herein and will expire on March 31, 2012, unless
25 renewed.

26 **JURISDICTION**

27 2. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part,
28 that the Board may discipline any licensee, including a licensee holding a temporary or an

1 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
2 Nursing Practice Act.

3 3. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
4 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
5 licensee or to render a decision imposing discipline on the license.

6 4. Section 2811(b) of the Code provides that each license not renewed shall expire but
7 may within eight years be reinstated upon payment of fees and submission of proof of the
8 applicant's qualifications as may be required by the Board.

9 STATUTORY AND REGULATORY PROVISIONS

10 5. Section 482 of the Code states:

11 Each board under the provisions of this code shall develop criteria to evaluate
12 the rehabilitation of a person when:

13 (a) Considering the denial of a license by the board under Section 480; or

14 (b) Considering suspension or revocation of a license under Section 490.

15 Each board shall take into account all competent evidence of rehabilitation
16 furnished by the applicant or licensee.

17 6. Section 490 of the Code provides, in pertinent part, that a board may suspend or
18 revoke a license on the ground that the licensee has been convicted of a crime substantially
19 related to the qualifications, functions, or duties of the business or profession for which the
20 license was issued.

21 7. Section 493 of the Code states:

22 Notwithstanding any other provision of law, in a proceeding conducted
23 by a board within the department pursuant to law to deny an application for a license
24 or to suspend or revoke a license or otherwise take disciplinary action against a
25 person who holds a license, upon the ground that the applicant or the licensee has
26 been convicted of a crime substantially related to the qualifications, functions, and
27 duties of the licensee in question, the record of conviction of the crime shall be
28 conclusive evidence of the fact that the conviction occurred, but only of that fact, and
the board may inquire into the circumstances surrounding the commission of the
crime in order to fix the degree of discipline or to determine if the conviction is
substantially related to the qualifications, functions, and duties of the licensee in
question.

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,'
and 'registration.'

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(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

11. California Code of Regulations, title 16, section 1445(b), states:

When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

COST RECOVERY

12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

DRUGS

13. Lexapro (Escitalopram) is a prescription medication used to treat depression and certain types of anxiety. It is defined as a dangerous drug in Section 4022 of the Code.

FIRST CAUSE FOR DISCIPLINE

(January 11, 2005 Conviction for DUI on July 3, 2004)

14. Respondent is subject to disciplinary action under sections 490 and 2761(f) in that she was convicted of a crime that is substantially related to the qualifications, duties, and functions of a nurse. The circumstances are as follows:

1 a. On or about January 11, 2005, in a criminal proceeding entitled *People of the*
2 *State of California v. Ann Acacia Ellis*, in San Diego County Superior Court, case number
3 M934866, Respondent was convicted on her plea of no contest for violating Vehicle Code section
4 23152(b), driving with blood alcohol content greater than 0.8% by weight.

5 b. As a result of the conviction, on or about January 11, 2005, Respondent was
6 sentenced to five years probation, to pay \$1700 in fines and to attend a Multiple Conviction and
7 MADD Impact Panel Program.

8 c. The circumstances that led to the conviction are that on July 3, 2004,
9 Respondent drove a motor vehicle after consuming alcohol.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct - Use of Alcoholic Beverages in Dangerous Manner)**

12 15. Respondent is subject to disciplinary action under Code section 2762(b) for
13 unprofessional conduct in that she used alcohol beverages to an extent or in a manner that
14 dangerous to herself and the public on July 3, 2004 as set forth in paragraph 14 above, which is
15 incorporated here by this reference.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct - Obtaining Dangerous Drugs Unlawfully)**

18 16. Respondent is subject to disciplinary action under sections 2761(a) and 2762(a) of the
19 Code in that, on or about February 27, 2008, while working as a registered nurse in a physician's
20 office, Respondent created a "Telephone Encounter" for sixty 5mg tablets of Lexapro with three
21 refills for herself, wrote a prescription for that same amount of Lexapro using her employer
22 physician's electronic signature and sent the prescription via facsimile to La Jolla Discount
23 Pharmacy. Respondent then filled the prescription at La Jolla Discount Pharmacy. On or about
24 February 29, 2008, Respondent attempted to delete the "Telephone Encounter" involving her
25 prescription for Lexapro from the electronic patient management system.

26 **DISCIPLINE CONSIDERATIONS**

27 17. To determine the degree of discipline, if any, to be imposed on Respondent and
28 pursuant to California Code of Regulations, title 16, section 1445(b)(2), Complainant alleges that

1 in a prior criminal proceeding, Respondent was convicted for driving under the influence of
2 alcohol or drugs in Idaho on or about October 3, 1998.

3 PRAYER

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board of Registered Nursing issue a decision:

- 6 1. Revoking or suspending Registered Nurse License Number 607487 issued to Ann
7 Ellis;
- 8 2. Ordering Ann Ellis to pay the Board of Registered Nursing the reasonable costs of the
9 investigation and enforcement of this case, pursuant to Business and Professions Code section
10 125.3;
- 11 3. Taking such other and further action as deemed necessary and proper.

12 DATED: 5/16/10

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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